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NO. 86-376

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

STATE OF CONNECTICUT,

Petitioner,

V.

EARL BADGETT,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Connecticut

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BRIEF OF AMICI CURIAE, ARKANSAS, HAWAII, IDAHO, INDIANA, KENTUCKY, LOUISIANA, MICHIGAN, MINNESOTA, NORTH CAROLINA, NORTH DAKOTA, OKLAHOMA, SOUTH CAROLINA, VERMONT, THE VIRGIN ISLANDS, VIRGINIA, AND WISCONSIN*

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

BRIEF OF AMICI CURIAE 1

INTEREST OF AMICI CURIAE 1

REASONS FOR GRANTING THE WRIT 2

I. THERE IS A CONFLICT BETWEEN THE DECISION OF THE COURT BELOW AND THE DECISION OF A COURT OF APPEALS ON ISSUES OF FEDERAL LAW 2

II. THE CASE AT BAR PRESENTS SUBSTANTIAL QUESTIONS OF FEDERAL LAW THAT HAVE NOT BEEN, BUT SHOULD BE, DECIDED BY THIS COURT 2

A. *The Duty of Arresting Officers to Preserve Arrestees' Property, to Protect Public Safety, and to Prevent False Claims of Loss or Theft, Present Substantial Questions Here* 2

B. *The Requirement of a Formal Inventory Policy, Before an Otherwise Reasonable Automobile Search at the Scene of Arrest Can Be Undertaken, Presents Substantial Questions* 4

CONCLUSION 7

TABLE OF AUTHORITIES

CASES

Cady v. Dombrowski, 413 U.S. 433 (1973)	3
California v. Carney, 105 S. Ct. 2066 (1985)	2
Chambers v. Maroney, 399 U.S. 42 (1970)	5
Cooper v. California, 386 U.S. 58 (1967)	3, 4, 6
Florida v. Meyers, 104 S. Ct. 1852 (1984)	4
Harris v. United States, 390 U.S. 234 (1968)	6
Illinois v. Lafayette, 462 U.S. 604 (1983)	3, 4
Michigan v. Long, 463 U.S. 1034 (1983)	2
Michigan v. Thomas, 458 U.S. 259 (1982)	4, 5
New York v. Belton, 453 U.S. 454 (1981)	2, 4, 5
New York v. Quarles, 104 S. Ct. 2626 (1985)	3, 5, 6
South Dakota v. Opperman, 428 U.S. 364 (1976)	3, 4, 6
United States v. Hellman, 556 F.2d 442 (9th Cir. 1977)	2
United States v. Prescott, 599 F.2d 103 (5th Cir. 1979)	2
United States v. Rabinowitz, 339 U.S. 56 (1950)	4

SECONDARY AUTHORITIES

LaFave, *"Case-by-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma*, 1974 Sup. Ct. Rev. 127 — 5

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BRIEF OF AMICI CURIAE

INTEREST OF AMICI CURIAE

Amici curiae are states, whose officers in the field must frequently encounter the potentially dangerous situation disclosed in this case. Further, these officers frequently must impound vehicles upon arrest in circumstances similar to those in this case. Securing the vehicle for protection of public safety, preservation of arrestees' property, and prevention of false claims of theft or property loss, is an important and legitimate objective and cannot always be conducted pursuant to detailed, formal, written policies. The situation in this case is a recurrent one, to which there are many analogous holdings of this Court, but none is squarely on point.

Amici further note that, in these situations, arresting officers often turn vehicles over to civilian wrecker drivers. Any reasonable person would recognize in the present case the high probability that the vehicle contained firearms, contraband drugs, or even money, which would be easily stolen while the vehicle is out of police custody. To turn over the vehicle to an individual of unknown qualifications, when it may contain easily accessible items that virtually invite theft, would be irrespon-

sible. Officers should have authority, when to do so is reasonable under all the circumstances, to secure the vehicle at the scene, rather than to delay inventory in reliance on formalized procedures.*

REASONS FOR GRANTING THE WRIT

I. THERE IS A CONFLICT BETWEEN THE DECISION OF THE COURT BELOW AND THE DECISION OF A COURT OF APPEALS ON ISSUES OF FEDERAL LAW.

The Petition for Certiorari discloses the conflicts in the decisions below, concerning whether an inventory of the kind at issue can be valid without a standardized inventory policy. *Compare, e.g., United States v. Prescott*, 599 F.2d 103, 105-06 (5th Cir. 1979) (existence of inventory policy and intent to effectuate it not necessary to valid inventory search) *with* the decision below *and, e.g., United States v. Hellman*, 556 F.2d 442, 443-44 (9th Cir. 1977) (search held invalid because of absence of inventory policy and intent to effectuate it).

II. THE CASE AT BAR PRESENTS SUBSTANTIAL QUESTIONS OF FEDERAL LAW THAT HAVE NOT BEEN, BUT SHOULD BE, DECIDED BY THIS COURT.

A. The Duty of Arresting Officers to Preserve Arrestees' Property, to Protect Public Safety, and to Prevent False Claims of Loss or Theft, Present Substantial Questions Here.

A very high percentage of arrests involves automobiles. *Cf. California v. Carney*, 105 S. Ct. 2066 (1985); *Michigan v. Long*, 463 U.S. 1034 (1983); *New York v. Belton*, 453 U.S. 454 (1981). In a high percentage of these cases, the arresting officers

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* This brief deals with the first question presented by Petitioner, but amici agree with, and express support for, Petitioner's arguments on the second question also.

have responsibility for ensuring that the vehicle is taken into custody. Both the arresting officers and the police department then have responsibility for its safekeeping and for public safety.

The public safety aspects of this responsibility are significant. Officers usually do not know what may be in a vehicle taken into custody. The presence of weapons or contraband is not unusual. *Cf. South Dakota v. Opperman*, 428 U.S. 364 (1976) (inventory of impounded car revealed contraband). In *Cady v. Dombrowski*, 413 U.S. 433 (1973), this Court held that the "impression" that the vehicle driver, who was a police officer, may have had a firearm that could be stolen from the locked trunk of a towed vehicle, was a factor in making the search reasonable. So should the expectation that an impounded vehicle contains unknown controlled substances, which are as much subject to theft and misuse as the pistol in *Cady v. Dombrowski*. A less probable, but occasional event is the impoundment of vehicles that contain dangerous substances such as explosives or poisons. *Cf. Cooper v. California*, 386 U.S. 58 (1967) (search justified for officers' own protection). Although such vehicles are infrequently impounded, they are to be found among the thousands of vehicles that are impounded annually, and they create serious danger on those occasions. As in *Illinois v. Lafayette*, 462 U.S. 604 (1983), in which this Court recognized the need for inventories of the contents of containers held by arrested suspects because the contents sometimes are dangerous, inventory in such a case as this one is warranted by public safety concerns. *See also New York v. Quarles*, 104 S. Ct. 2626 (1985) (statement elicited from arrested suspect, regarding location of weapon, held admissible under public safety exception although otherwise possibly inadmissible).[1]

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1 In *Quarles*, the arrestee had been arrested and handcuffed; he was surrounded by four officers who had holstered their weapons because the situation was "under control;" and an officer asked him where his weapon was. The Court's holding was as follows: "We hold that on these facts there is a 'public safety' exception to the requirement that Miranda warnings be given before a suspect's answers may be admitted into evidence, and that the availability of the exception does not depend on the motivation of the individual officers involved."

Likewise, the need to preserve property and protect against false claims of theft is a significant concern. *See Opperman, supra; Lafayette, supra; see also Michigan v. Thomas*, 458 U.S. 259 (1982) (recognizing that property in automobile may be "tampered with" after arrest, while out of police custody). In this case, the arresting officers turned the vehicle over to someone else to tow it to police headquarters. Officers who are turning over a vehicle to a civilian wrecker driver should know, first, what is inside readily accessible areas, particularly when (as here) any reasonable person would know of the high likelihood that the automobile contained contraband drugs or weapons that could be stolen and sold (or even might contain money). What was to prevent the theft or misuse of these items by a non-police employee during towing? Before turning the vehicle over, the arresting officers should be able to make at least a brief determination on the scene that the vehicle does or does not contain such items. *Lafayette, supra.*

B. The Requirement of a Formal Inventory Policy, Before an Otherwise Reasonable Automobile Search at the Scene of Arrest Can Be Undertaken, Presents Substantial Questions.

The legality of these kinds of searches should not depend upon the existence of a formal policy minutely prescribing the actions of the officers. *New York v. Belton, supra.* In the first place, the custodial function of a police department should not be reduced to rules and regulations as a matter of fourth amendment law. The issue, after all, "is not whether it was reasonable to procure a search warrant, but whether the search was reasonable." *Cooper v. California*, 386 U.S. 58, 62 (1967), citing *United States v. Rabinowitz*, 339 U.S. 56, 66 (1950).[2]

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2 *See also Michigan v. Thomas*, 458 U.S. 259 (1982) ("the justification to conduct such a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant"); *Florida v. Meyers*, 104 S. Ct. 1852 (1984)

In the second place no such policies can or should attempt to prescribe the steps that officers should follow during a dangerous highway stop of a suspect whom officers have been informed may have a sawed-off shotgun in his possession, as in this case. Such policies are likely to require counterproductive or even dangerous actions by officers, if they are written in detail.[3] Furthermore, it is unlikely that any formal policy could or would prescribe police conduct with the minute detail necessary to cover a situation such as this one—in which officers have carefully sought to effect the safe, uneventful arrest of a potentially dangerous suspect, one officer has found and moved an item but in the press of business has not told the other, and, finally, the other officer inspects an item that is likely to contain valuable or contraband property, in preparation for turning the vehicle over to a non-police-officer wrecker driver. If a formal policy attempted to provide detailed direction for such a case, it could result in requiring counterproductive or even dangerous behavior, and could not anticipate all eventualities.

As this Court said in *Quarles, supra,* in a closely analogous fact situation,

> In a kaleidoscopic situation such as the one confronting these officers where spontaneity

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(Court held, on authority of *Thomas*, that the lower court had erred in concluding that a warrantless search of a car was improper where the car had been impounded eight hours earlier and was presently stored in a secure area); *cf. Chambers v. Maroney*, 399 U.S. 42 (1970) (search on probable cause may take place after vehicle is immobilized, without warrant).

3 Fourth Amendment doctrine . . . is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable . . . . A highly sophisticated set of rules . . . may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be literally impossible of application by the officer in the field.

New York v. Belton, 453 U.S. 454 (1981), *quoting* LaFave, *"Case-by-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma*, 1974 Sup. Ct. Rev. 127, 742.

> rather than adherency to a police manual is the order of the day, the application of the [public safety] exception we recognize today should not be made to depend on *post hoc* findings at a suppression hearing concerning the subjective motivation of the arresting officer. Undoubtedly most police officers, if placed in Officer Kraft's position, would act out of a host of different, instinctive motives—their own safety, the safety of others, and perhaps as well the desire to obtain incriminating evidence from the suspect.

The situation in *Quarles* was unusual in nature, yet it called for this Court's review by certiorari. The question at issue in this case undoubtedly recurs far more frequently, and should be controlled by the same principles, but has been the subject of confusion and conflict in the decisions.

Although most of the cases decided by this Court that have dealt with inventories have concerned "standard procedures," there have been certain cases in which the existence of such procedures has not been relevant. In *Cooper v. California, supra,* the vehicle was impounded pursuant to a forfeiture statute, which did not authorize search or inventory. The officers inventoried it fully a week later, without a warrant, and with no mention in the opinion of standard procedure. The Court upheld the search. Further, in *Harris v. United States,* 390 U.S. 234 (1968), an officer opened an impounded car while taking steps to safeguard it against the elements after completing an inventory search. He observed a car registration card lying on the metal stripping of the car door. The court, having noted that the legality of the earlier inventory was not presented, went on to hold that the entry into the vehicle was lawful because the action was "taken to protect the car while it was in police custody," irrespective of the lawfulness of the earlier inventory.[4] These

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4 In *South Dakota v. Opperman, supra,* this Court explained *Harris* thus:

cases involve situations less likely to recur than the vehicle impounded upon arrest, which the officers, as here, wished to secure before turning over to other personnel. Review should be granted to determine whether those holdings should be extended to the more common situation presented here.

Jurisdictions differ nationwide on whether and to what extent they have formal policies governing such events. As the petition for certiorari demonstrates, there have been significant differences among the courts that have considered similar searches on the question whether a formal policy is relevant or required. The question is one as to which courts have divided, is of national importance, and should be decided by this Court.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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The Court expressly noted that the legality of the inventory was not presented, since the evidence was discovered at a point when the officer was taking protective measures to secure the automobile from the elements. But the Court clearly held that the officer acted properly in opening the car for protective reasons.

Id. at n.9.